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Kevin J. Heint Brooks & Kushman P.C. 22nd Floor 1000 Town Center Southfield, MI 48075-1351			EXAMINER MATHEW, FENN C	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/833,401
Filing Date: April 11, 2001
Appellant(s): FERBER ET AL.

MAILED
AUG 09 2007
GROUP 3700

John R. Buser
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 04/30/2007 appealing from the Office action mailed 06/16/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 10, and 12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern (U.S. 4,962,759) in view of Lin (U.S. 6,183,430) and further in view of Haraga (U.S. 5,245,714). Referring to claim 1, Stern discloses an air mat system comprising an air pump/controller (22), a mat (20), a hose (24), switches (column 4, lines 21-24), and a heating element (120), but does not show a remote control. Lin teaches an analogous device including a controller (4), and a remote control. Lin suggests that remote controls are advantageous (in figures) as a user may lay in the tub and use the remote control to adjust parameters. It would have been obvious to one having ordinary skill in the art at the time of invention to provide a remote control for ease of use and convenience. Haraga teaches a hydrotherapy device including a controller, and an infrared remote control (30). Haraga teaches the advantages of an infrared remote control, particularly noting ease of controlling while lying in the tub and prevention of water coming into contact with wires. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to provide the modified Stern device with a remote control as taught by Haraga as an art recognized alternative to the remote control disclosed by Lin to ensure safety while maintaining ease of use and convenience. Referring to claim 2, Stern, as modified by Lin and Haraga teaches the remote control maintaining communication through an infrared transmitter. (Haraga, column 21, lines 1-20). Referring to claim 3-7, limitations regarding various control parameters and programs above are considered obvious design choices well within the knowledge of a skilled artisan to suit various needs and applications as deemed fit by the user. With respect to claim 10, note in figures 1 and

5, the housing of Stern defines a 'recess' on the top surface. Referring to claim 12, Stern as modified by Lin and Haraga, teaches a bracket mounted to a support surface to hold the remote control. (Haraga 30').

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern in view of Lin and Haraga as applied to claim 1 above, and further in view of Barradas (U.S. 5,588,161). The modified Stern device discloses the claimed invention except for a recess located on the device body to hold the remote control unit. Barradas discloses a hydrotherapy device wherein the device body includes a recess for storage of the remote control device. It would have been obvious to one having ordinary skill in the art at the time of invention to provide the body of the modified Stern device with a recess as taught by Barradas in order to provide a convenient holder for the remote control.

Claims 1 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Haraga. Referring to claim 1, Lin discloses an air pump (4), a mat (33), a hose (41, 42) connecting the air pump to the mat, a controller (4) and a remote control (51) communicating with the controller. Lin lacks a remote control that is not physically connected to the controller. Haraga teaches a hydrotherapy device including a controller (C) and an infrared remote control (30). Haraga teaches that it is advantageous to use an infrared remote control in order to prevent wires from coming into contact with water while a user sits in a tub. It would have been obvious to one having ordinary skill in the art at the time of invention to substitute a wireless remote control as taught by Haraga in order to prevent electrical shock. Referring to claim 8, Lin, as modified above teaches a mat that is made of flexible material and can be rolled

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up (see fig. 6). Referring to claim 9, the modified Lin device discloses the claimed invention except for the specific material used. Lin does however disclose and embodiment wherein the pad can be rolled up. The specific material used is considered a matter of obvious design choice well within the knowledge of the skilled artisan, as the skilled artisan would choose an appropriate material based on its suitability for the intended use. In the present case, Lin specifies that the massage mat may be rolled up and that the mat must be capable of being submerged in water.

Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of Haraga as applied to claim 1 above, and further in view of Sandrin (U.S. 5,050,591). Referring to claim 12, the modified Lin device discloses the claimed invention except for a plurality of suction cups located on the bottom of the mat. Sandrin discloses an analogous water massage mat including suction cups (6) located on the exterior surface allowing the mat to be attached to a tub surface. It would have been obvious to one having ordinary skill in the art at the time of invention to provide the modified Lin device with suction cups, as taught by Sandrin in order to secure the mat to a tub surface and prevent slipping of the mat during use. Referring to claim 13, Lin as modified above in claim 12 discloses the cups made of a synthetic or natural elastomer. (Sandrin, col. 3, line 65).

Claims 14-25 rejected under 35 U.S.C. 103(a) as being unpatentable over Sandrin (U.S. 5,050,591) in view of Cook (U.S. 3,045,254). Referring to claim 14, Sandrin discloses a flexible member (1) having at least two layers defining a plurality of passageways (32), a receptacle (4) through which compressed air is provided to the air

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passages, a plurality of air holes (5) formed in the air passages, and a plurality of hermetically sealed passages secured between the layers defining the plurality of air passages at spaced locations adjacent the air passages and sealed between the layers to prevent water contact (col. 4, lines 8-25). Sandrin discloses that the hermetically sealed passages are filled with water or air in order to cushion a user during use. Cook teaches a bathtub mat/liner which a user sits or lays down on while taking a bath. In col. 2, lines 26-36, Cook teaches that foam rubber is advantageous as a cushioning material to be placed inside a bathtub mat. It would have been obvious to one having ordinary skill in the art to fill the hermetically sealed passages of Sandarin with foam or foam rubber as taught by Cook in order to provide alternative cushioned support for a user. Referring to claim 15, Sandarin as modified above discloses the mat made of a flexible member including a soft vinyl material (col. 2, lines 65-68). Referring to claim 16, the modified Sandarin discloses the two layers of flexible member are polymer sheet material secured together at spaced locations to define air passages. (See abstract). Referring to claim 17, Sandarin discloses a limited number of holes of limited size. Referring to claim 18, Sandarin discloses the 'cushioning chambers' sealed separately from the air passages, with each chamber being made of polymer material. Referring to claim 19, Sandarin discloses the two layers of thermoplastic sheet material bonded together around the cushioning chambers and defining air passages in a branched array. Referring to claims 20-25, the claims are essentially similar in scope to claims 14-19. See discussion above.

(10) Response to Argument

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Applicant has traversed rejections of claims 1-7, 10 and 12 as being unpatentable over Stern in view of Lin and Haraga. The issue at the forefront is whether or not Haraga, a whirlpool constitutes non-analogous art. Applicant has cited *In re Oetiker*, stating that Haraga bears no relevance to the Stern and Lin devices. Examiner disagrees. As stated in previous rejections, the entire device relates to hydromassage apparatuses. Applicant has attempted to make a parallel between the combination of the current case, and that of the combination of fasteners from a garden hose and a garment fastener from *In re Oetiker*. The combinations are not parallel. In the case of the fasteners of *In re Oetiker*, the fasteners were being taken from two completely different objects having absolutely no relevance towards each other. The same cannot be said of Stern, Lin and Haraga. As mentioned before they are both hydromassage apparatuses, and their relation in the art can be seen in the cross-referencing between class 601 and class 4 in various prior art. The skilled artisan would look to any hydromassage apparatus having remote controls. As such, it is believed that the combination is proper.

Regarding applicant's traversal of the rejections of claim 11 over Stern, Lin, Haraga, and Barrada, arguments regarding the combination of Haraga with Stern and Lin are addressed above. Barrada is relied upon to teach a recess in order to hold the remote control. The feature of electrical isolation is not directly in the claim language of claim 11, and had been addressed through the combination of Haraga with Stern and Lin.

Regarding applicant's traversal of the rejections of claim 1, and 8-9 over Lin and Haraga, Applicant has mirrored the non-analogous art argument. Please see arguments above.

Regarding claims 12 and 13, see above arguments regarding the analogous nature of Haraga. Furthermore, arguments regarding Sandarin not teaching a remote control are not taken well. Sandrin is relied upon to teach the use of suction cups. The remote control electrically isolated from the controller has been addressed by the combination of Lin and Haraga.

Referring to claims 14-25, Applicant has traversed the rejection over Sandarin in view of Cook. Sandarin teaches channels filled with air or fluid for the purpose of cushioning. Cook teaches it is well known to use foam rubber as cushioning element. Examiner stated it would have been obvious to the skilled artisan to substitute foam rubber for the air or fluid used in Sandrin as an alternative means of providing cushioning. Examiner agrees that it would not be desirable to provide Sandarin with rigid elements, however Examiner has only cited Cook as teaching foam rubber as an alternative cushioning means. Providing foam rubber would not inhibit the intended purpose which is to provide a **separate chamber** with air that causes bubbles to form when the mat is submerged in water. The 'cushioning chamber' is hermetically sealed and separate from the 'massage chamber'. Substitution of foam rubber as a cushioning element does not impede use of the device as it may still be submerged in water, laid upon by a user, removed and rolled up due to the compressible nature of foam rubber. Applicant has stated on page 13 of the arguments that Sandrin teaches away from

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using a rigid material such as flexible blocks or foam rubber. Examiner agrees Sandrin teaches away from using rigid material, but foam rubber **cannot** be construed as a rigid material, especially in light of the specification of Cook which states that the foam rubber is compressible. For this reason it is believed that the rejection is proper.


(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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Primary Examiner

Conferees:


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